



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

*Supreme Court of Pennsylvania at Pittsburg, September, 1853.*SHARPLESS ET AL vs. THE MAYOR, &c., OF PHILADELPHIA.¹

1st. In determining whether an act of the Legislature is constitutional, we must look to the body of the constitution itself for the reasons. The general principles of justice, liberty and right, not contained nor expressed in that instrument, are no proper elements to base a judicial decision upon.

2d. If such an act be a written general grant of legislative power; that is, if being a law, and if it be not forbidden expressly or impliedly, either by the State or Federal Constitution, it is valid.

3d. To make it void, it must be clearly not an exercise of legislative authority, or else be forbidden so plainly as to leave the case free from all doubt.

4th. An act of Assembly authorizing subscriptions by a city to the stock of a railroad corporation, is not forbidden in article first, section thirteenth of the State Constitution; that section not being a restriction upon the legislative authority of the two Houses, but a bestowal of privilege upon the separate branches.

5th. Such act does not impair the obligation of any existing contracts, nor does it attempt an impossibility by creating a contract; but merely authorizes the corporations to make one, if they shall see proper.

6th. This is not such an injury to plaintiffs lands, goods, or person, that they are entitled to judicial remedy for it, agreeably to section eleven, article nine. It is no injury at all, except on the gratuitous assumption that it is forbidden in some other part of the constitution.

7th. It does not violate the right of acquiring, possessing, or protecting property secured by section first, article nine. The right of property is not so absolute but that it may be taxed for public benefit.

8th. This is not a taking of private property for public use without compensation, contrary to section tenth, article nine. When property is not seized and directly appropriated to public use, though subjected in the hands of the owner to greater burdens than before it is not taken.

9th. It cannot be said that the plaintiffs will be deprived of their property in violation of section eleventh, article nine. The settled meaning of the word "deprive," as there used, is the same as that of "taken" in section ten.

10th. An act of Assembly to authorize the taking of private property

¹ The within points stated by Ch. J. Black, form an abstract of the opinion of the Court. This being the majority opinion, has already been widely distributed by the newspapers, and will appear in due season in Harris' Reports. For these reasons, as well as by reason of its very great length, we have not given it to our readers. The minority opinions cannot appear in the regular volume of reports, and we shall therefore admit them to our pages. We give in this number the dissenting opinion of Mr. Justice Lowrie, and shall give in our next the opinion of Mr. Justice Lewis. *Eds. Am. L. R.*

for private use would be unconstitutional, because it would not be legislation, but a mere decree between private parties; but this is no taking in any sense, for any purposes or for any uses.

11th. Plaintiffs have no ground for complaint against the Acts of Assembly now in question because they authorize the creation of a public debt, of which they may be required hereafter to pay a part in the shape of taxes, for by taxation alone can any harm ever come to them.

12th. If it be within the scope of our legislative powers, with consent of the local authorities, to permit assessments of local taxes, for the purpose of assisting the corporation to build railroads, bearing to tax payers the relation which these roads do, then the laws complained of are unobjectionable.

13th. Taxation is a legislative right and duty which must be exercised by the General Assembly through the medium of laws passed by them under their authority.

14th. The power of the Assembly with reference to taxation is limited by their own discretion. For its abuse, members are accountable to nobody but their own constituents.

15th. By taxation is meant a certain mode of raising revenue, for public purposes, in which the community that pays it have an interest. The right of the State to lay taxes has no greater extent than this.

16th. The act of a Legislature authorizing contributions to be levied for a mere private purpose, or for a purpose which, although public, is one in which the people, from whom they are exacted, have no interest, would not be law, but a sentence commanding a judicial payment of a certain sum by one portion or class of people to another—the power to make such a law is not legislative but judicial, and was not given to the Assembly by the general grant of legislative authority.

17th. But to make a tax law unconstitutional, when thus granted, it must be apparent that the community taxed can have no possible interest in the purpose to which their money is to be applied. This is more especially true if it be a local tax. Local authorities have themselves levied taxes in pursuance of an act of Assembly.

18th. If, therefore, making a railroad be a mere private affair, or if the people of Philadelphia have manifestly no interest in the railroads which run to and towards the city from Easton, and from Wheeling, then the laws are unconstitutional.

19th. But if railroads are not private affairs, are but public improvements, then it is the right and duty of the State to advance commerce and promote the welfare of the people, by making them, or causing them to be made, at the public expense.

20th. If the State declines to make desirable or public improvements she may permit it to be done by companies. The fact that it is made by a private corporation does not take away its character as a public work.

21st. The right of the company by which it is made to be compensated for the expense of constructing it, by taking tolls for its use, though it gives the corporation an interest in it, it does not extinguish the interest of the public, nor make the work private, because, to say nothing of other advantages, though the public may pay toll, still they can travel on it much cheaper than without it.

22d. The State may, therefore, rightfully aid in the execution of such public works by delegating to corporations the right of eminent domain, as she always does, or by the execution of the taxing power, as she does very often.

23d. The right of local authorities to tax a particular city for local improvement is as clear a right as to lay a general tax for any public purpose whatsoever.

24th. If the State having constitutional power can create a State debt by a subscription in behalf of the whole people to the stock of private corporations engaged in making public works, it follows from what has been before said that she may authorize a city or district to do the same thing, provided such city or district has a special interest in the work to be so aided.

25th. There is not a case in which we can determine as matter of law that the city has no interest in the proposed railroads. That this is true as matter of fact has not even been asserted in argument; only a little more than intimated.

26th. If the Legislature and the Councils decide that the city has an interest large enough to justify these subscriptions, we cannot gainsay this without declaring all interest to be flatly impossible, and to do that would be absurd.

27th. Finally, if the authorities of the city, in accordance with their charter, and with certain laws supplementary thereto, are about to create a public debt for public purposes, in which the city has an interest, it will be as valid and binding as if it had been legally contracted to accomplish any other public purpose for the benefit of the city. Opinion per BLACK, Ch. J. WOODWARD & KNOX, J. J. assenting, LEWIS & LOWRIE, J. J. dissenting.

The following dissenting opinion was delivered by

LOWRIE, J.—It is insisted that a municipal corporation, even with the consent of the Legislature and of a majority of its voters, has no constitutional right to become a stockholder in a rail-road corporation, and may not borrow money to enable it to do so. The measure derives no essential virtue from the vote of the people of the town or city, or from the will of their officers; for the citizen claims the more authoritative protection of the State. He owes no allegiance to towns or cities, or to local majorities of any kind, but only to the State, which alone is sovereign; and it is this allegiance alone that enforces his obedience to local authorities. Towns and cities may command and act where the Legislature can give them authority to do so, and has given it; and without this, neither town officers nor town majorities, even though unanimous, have any legitimate control over the property or rights of the citizen. All the

efficacy of the subscription is therefore dependent upon the act of the Legislature, and if under the constitution, such an act is excluded from the province of government, then of course, no legislative sanction and no combination of governmental majorities can make it valid.

The principle involved in this case has been so often acted on by the Legislatures of our own and of other States, and its correctness has been so often affirmed by judges, whose learning and talents I may emulate, but cannot hope to equal; that it is with the utmost diffidence that I venture to express a contrary opinion.

When a proposed measure promises a present advantage, and there is no apparent wrong to any one in carrying it out; it is not unusual to enter upon it without scrutinizing with any suspicious care, the tendency of the principle on which it is based, and even without studying what the principle of it is. The example being once set, is followed by many similar instances; and it is not until the practice begins to run to an extreme, and to develop its dangerous results, that we begin to suspect its fundamental principle, or to doubt the propriety of the action of those who led the way. This thought may furnish some apology for the boldness that questions the first impressions of Legislature and of Courts; and it is not without considerable illustration in the laws, arguments and decisions on this very subject. It would be surprising, if the first attempts to define the application of a principle should be entirely successful. And even if they were, they could not be known to be correct until they had stood the test of many subsequent disputes. Like a boundary line through a wilderness country—it may require many experimental surveys, conditional lines, temporary concessions and earnest contests, before its true place can be defined and settled.

In the case of the *Commonwealth vs. Mc Williams*, 11 State R. 70, this Court *seems* to have affirmed the constitutionality of such an act as this we are now considering; because no unconstitutional principle was pointed out by the Counsel or seen by the Court, as being involved in the measure. The only positive principle, enunciated by the Court, in support of the measure, is that the Legisla-

ture may authorize local taxation for local improvements. Without that principle, (not needed by the case) that act of Assembly could not have been sustained, and I shall endeavor to show that, even with it, it could not be.

Several other cases in other States carry the principle of local taxation even farther. *Godden vs. Crump*, 8 Leigh, 120; *Harrison vs. Holland*, 3 Grattan, 347; *Thomas vs. Leland*, 24 Wend. 65; *Shaw vs. Dennis*, 5 Gilman, 405; *Reple vs. Brooklyn*, 4 Comstock, 419. But none of these cases are in point as to the means by which the measure is proposed to be effectuated here; and in my opinion, they do not involve the essential principle of the present causes.

It is otherwise, however, in the cases of *Bridgeport vs. Housatonic R. R. Co.*, 15 Conn. 475; *Nichol vs. Nashville*, 9 Hump. 252; *Talbot vs. Dent*, 9 B. Monroe, 526; and *Cincinnati, W. & Z. R. R. Co., vs. Clinton Co.*, lately decided by the Supreme Court of Ohio.

I take the last case as a fair sample of them all.—The aim of the learned Court, so far as it is important to notice it here, is to show that the work was of such a local character as to justify local taxation by the Legislature, either directly or through the local authorities, and having done so, (as is supposed,) the inference is drawn—“if” “either might do the whole (work) is it not too obvious for doubt,” “as a question of power, that each may be authorized to do a part?” Certainly it is. But I most respectfully think that this does not exhaust the argument. Nor do I presume that the learned Court regarded it as so doing; for, in another place, they say that the object being proper, it “might be done by any means, not prohibited, adapted to the end in view, and subscription of stock to a company incorporated for that purpose is not objectionable.” Here is the very question of the cause; and without admitting the correctness of the views expressed as to the absoluteness of the legislature’s power of local taxation for improvements which they may call local, I cannot help thinking that this question of the means has not been fully considered. Are not the means prohibited by the Constitution?

When we notice the character of municipal corporations, it seems somewhat strange that they should be allowed to borrow money for any purpose, except as a mere temporary expedient. Our municipal corporations have none of the sacredness that belonged to the chartered municipalities of England. Theirs were grants of franchises and privileges, generally purchased and paid for, and guaranteed by Magna Charta, and were part of the very means and process of the development of individual rights, for which Englishmen were continually and earnestly contending. Ours are mere instruments of government, having essentially no higher value than other local offices, being instituted as these are, for the purpose of devising and executing certain local regulations which it would be inconvenient and almost impracticable for the Legislature to do by direct legislation. Their functions are different from the local offices of counties and townships, chiefly because of a more dense population, and not at all because of any constitutional necessity. Properly speaking, they have no faith to pledge; because they have no place in the Constitution, and no guaranty that their existence will be continued even for a year; because their jurisdiction, limits and taxing power, may be expanded, contracted and subdivided at the pleasure of the Legislature; because usually their taxing power is limited to the mere necessities of their corporate duties, leaving them little or nothing to answer other demands upon their plighted faith; and because the legislative power over them for alteration, extension and annihilation, cannot be taken away, and ought not to be impeded by their act of incurring debts—their power ought to be carefully limited, for the experience of all municipalities, ancient and modern, shows that there is always a tendency in corporations to sacrifice individual rights to the interest of the corporate body. A watchful observer of the acts of our own cities and towns can point out many instances of this. But it stands written in every age, in almost every year of the history of the Grecian and Italian cities, democratic, oligarchic, or monarchic, and this disregard of individual rights, was more than anything else, the cause of their decay.

The corporation to be aided by the investment, is a rail-road company. That such is a private corporation has very often been decided and is not disputed. It is essentially so, for it is not an instrument of government, and no Legislative declaration can alter this fact. In it the right of voting is regulated on principles totally different from the elective franchise of the constitution. It is private and not public, for its province is regulated, not by the constitution and general laws of the land, but by its charter, which stands as the contract terms of its existence, at least among its members. It is private, because it is not a law imposed upon any one by legislative authority; but a plan of union, accepted as such by persons, voluntarily and each for himself, associating themselves according to its terms. He that becomes a member of such a corporation voluntarily gives up so much of his property as he invests in it; he converts his money or other property into corporation stock. Besides this, his whole estate may be in some measure subject to the control of the corporation; for all private corporations may be so constituted that the members may be made personally liable for the corporation debts. And this is not all, for if this may be imposed upon a municipal corporation, it may be imposed upon any township or ward, or half or tenth part of a township or ward; for the legislature can subdivide any of them at pleasure. Nay, they may on the same principle be forced to become members of any private partnership formed for similar purposes, called public.

What, then, is the substance of the proposed measure; It is to make a municipal corporation, and therefore all its citizens, and to some extent, all persons owning property within its limits, members of a private corporation by an act of government. It is to take the property of the citizen, by an act of government, and invest it for him in the stock of a private partnership. It is to take his credit or his property out of the protection of the State Constitution, and place it under a charter which must thereafter be its only law. It is to place it where neither his power as an individual can control it, nor his vote as a citizen affect it. Under the constitution, he stood as the equal of all men, in the choice of the officers

who might affect any of his interests. (Bill of Rights, S. 5.) Under the charter now proposed to be forced upon him, his voice is not heard at all, or if at all, most indistinctly and indirectly; for neither the citizens nor their municipal representatives may have any voice in choosing the majority of the rail-road directors, and the votes which they do give bear no adequate proportion either to their numbers or their interest. Force upon them this new relation, and as to so much of their interests, you take away all their rights as individuals, and as citizens; and they are all, some with and some without their consent, made carriers of goods and of passengers, and liable, in some degree, to the duties and the risks of that relation.

Now here is the very question of the cause, and I proceed to its more direct consideration. May government force any portion of the citizens into such a relation? May a municipal corporation embark the interests of its citizens in the speculations of a private corporation or partnership? I think it cannot.

May not government authorize municipal corporations to engage in any sort of trade or business for the public benefit, on the faith of the taxes it has raised or has power to raise? Yes, it can, if that is proper governmental business; but it is not. And, of course, if the business be not governmental, government can levy no tax to carry it on. Is the stress laid upon the idea of the public benefit of the business? Then what line of business is there that is not regarded by those engaged in it, as being for the public benefit? Can proper public business be defined according to this standard? Generally, perhaps, it may; and then such business as this is declared to be the indefeasible right of man, as an individual, when it is declared that the right of acquiring and possessing property is indefeasible and inherent in man, and that it is excepted out of the general powers of government. (S. 1.) This declaration means nothing if government may convert itself, or part of itself, into a trading corporation or socialist commune, and pledge the credit and property of the citizens to sustain its schemes of trade. If it may, then all the guaranties of private property contained in the declaration of rights are but cob-web restraints upon the power of govern-

ment; for it may pledge all the property of the citizens, by engaging in some trading speculation.

I state an extreme case, not that I have any fear that it will happen, but merely that the principle may stand out with more prominence. The constitution means that there is a real distinction between the pursuits of the individual, and the province of the government; and it marks that distinction as clearly as general terms will admit. When it declares that the right of the individual man to "acquire, possess and protect his own property, and procure his own happiness, is inherent and indefeasible," and excludes it from the province of government; it means that this right shall not be invaded, and that government shall not undertake to control the individual in the exercise of it, either by directing his enterprises, investing his funds, or choosing his associates. If government can do this at all, in the manner here proposed, there is no limit to its power, and the whole form of our institutions may be changed by act of Assembly.

There may, no doubt, be many cases wherein it is difficult to mark the boundary between the province of the government and that of the individual citizen; but here there is none, for the line is distinctly marked by the fact that this particular business has been entrusted by law to private hands, and is subjected to the law that governs private relations. Can the citizens be compelled to enter into such a relation?

The attempt is forbidden by the Constitutional declaration that the right of the people "to alter, reform or abolish their government," that is, all governmental institutions, is "unalienable and indefeasible." (S. 2.) Admit the solecism that government may force any portion of its citizens into membership in an institution in which contract is the essential bond; then either this relation stands without its proper contract consequences, and you abolish the essential and constitutional distinction between contract relations and legal ones, including the inviolability of the former, which is impossible; or government has power to establish institutional relations among the citizens, which neither it nor they can "alter, reform or abolish." That is, government can establish social rela-

tions among the citizens—contract, and yet governmental—which neither it nor the people can change; because our Constitution forbids the government, and the Constitution of the United States forbids both government and people from “impairing the obligations of contracts.”

Such interference with private rights, is excluded by the Constitutional rule, in favor of the inviolability of contracts. (S. 17.) This rule involves the idea, that those individual rights, which are the proper subject of contract, and in so far as they are so, may be placed beyond the jurisdiction of governmental rules, by the mere will of individuals expressed in a contract. This shows that contract relations are higher in degree than those established by law, and that rules of law are intended to define the relations between individuals, only when they have not themselves fully defined them by an agreement. Thus the common law maxim, *conventio vincit legem*, acquires new authority from the Constitution, and it may be, its province is enlarged. Contract relations being thus placed above legal ones, it necessarily follows that the law cannot force them upon any one. If, then, this is to be regarded as a contract relation in its character and consequences, it is one that the law making power cannot institute in any form. If it is not a contract relation, then it is a governmental one, and may be dissolved by the power that created it. The obligation, being imposed by law, may be discharged in the same way. Its contract form does not alter the case, for its legal character depends upon its essence, and not upon its form; otherwise power could make its own forms the means of justifying the most palpable usurpation.

The incongruity of the proceeding, presents itself in strong light, if we take into consideration the rule which has been so often affirmed, that the charter of a private corporation is placed by the Constitution of the United States entirely beyond the reach of all state power. It is said that over sixty millions of dollars are invested and proposed to be invested in this way, in several states under various acts of Assembly. This amount is equal to the assessed valuation of the property in about half of the counties and half the territory of this state, taking the more thinly populated parts. The

amount may be over-estimated, but that is not important. What then is the proposition? It is to place all this amount of property under the control of private chartered corporations. Not by the individual will of each property holder acting for himself, but by the will of the government. That is, government interferes with private property in order to place it beyond the control both of the individual and of the government. It exercises power in order to abdicate power, or rather to transfer it to private hands. The property whose relations were subject to the rules of the law and the Constitution, is outlawed—banished its relations—and sent into the desolate exile of a private corporation, where it can claim only an exile's rights, and where the voice of the law and of the constitution is unheard, and the equal ballot of the independent freeman is disregarded. Here is *diminutio capitis* and no *jus postliminii*.

To my mind, it seems very plain that this measure is in violation of the whole spirit of the declaration of rights. It violates especially the first section, by undertaking to control the citizen in the investment of his funds and the choice of his business. It violates the second, by imposing upon him an institution which neither the government nor the people can alter or abolish. It violates the fifth, by imposing an institution, wherein the elective franchise is taken away. It violates the ninth, by taking the property of the citizen by a special act, and without trial. It violates the seventeenth, by making the citizen a member of a private partnership without his consent. The eleventh would be violated, if we should shut the doors of this Court against him, and refuse him a prompt and full remedy. And the very nature of government is violated by government erecting over its citizens an institution which it cannot control.

I have now finished my direct argument of the point which strikes me as the pivot of the case; but I cannot avoid the belief, that a glance at the history of the development of private rights, which resulted in producing the ideas embodied in our declaration of rights, will tend to show that I have not misunderstood those ideas.

Perhaps all the internal political contests that the world has ever witnessed have been, consciously or unconsciously, contests for the

natural rights of individuals. Superficially regarded, they seem to have been mere contests for power. But it is far otherwise, in them, all the sentiment is, that the individual has been wronged by the government; and the contest therefore, is for individual right, rather than for power. Power over others is a means of advancing the individual; and for this purpose, the selfish and overbearing will seek an undue share of it; but the mass of the people will never seek it for its own sake; but because they believe that their natural and individual rights will be more respected, the more their influence in the government is felt.

It is doubtless true, that the right of the individual as against government, did not develope itself in the consciousness of the Grecian and Roman antiquity; for a state of almost constant external war is peculiarly unfavorable to its development. When martial law is the normal state of a people's institutions, man is useful only as an element and instrument of society; and individual rights are merged in the sodality of the state. With them, power was the means by which the burdens of war were cast in such a manner as to weigh least heavily on those that ruled. With them the nation's glory was measured by the nation's extent, and by its power over other nations, and not by the intelligence and virtue and liberty of its citizens. The highest aim of society was boundless dominion, and the highest aim of the individual was the chief seat in the kingdom. Equality of rights was unknown to them except as the portion of the ruling caste, who arrogated to themselves all power. That individuals had rights independent of law, was a principle which they never comprehended. With them power was absolute, and the highest merit was martial skill, and hence might and law, valor and virtue, were identical terms.

All matters fell within the province of government. Religion, arts, trades, education, amusements, were the subjects of legislation. Not only the means, but the very form and essence of education and religion, were under the control of the state. Socrates was sacrificed for his efforts in the cause of education and progress, and Plato received a hint that some of the hemlock of his master's cup was left for him.

It was never so, but in an exceptional way, with the race of people from whom we derived our origin and our principles. As far back as history marks the progress of the Germanic tribes, liberty and independence was the motto on their banners. Personal independence was part of their governmental common law, and therefore part of their Constitution. It was the natural result of their national origin. Their's was the natural and spontaneous growth of a rural and homogeneous people, whose numbers were increased by the arts of peace, and by a virtuous regard for the family relation, and whose virtues and energies were developed by their conquests of the mountains and marshes, and forests and wild beasts of the earth, and under a government, free, unencroaching, and adapted to their circumstances. Roman development was from a city centre, by the arts of war, by the conquest and enslavement of their fellow men, always proceeding in disregard of individual rights, and, in order to maintain its position, requiring a government that disregarded them.

And when the German people invaded and conquered the Western Roman empire, war brought with it an analogous disregard of individuals rights, and fixed it among the institutions of government, by the establishment of the feudal system. But in England the idea was soon reclaimed as constitutional common law, and vindicated in Magna Charta; and since then the whole history of England is one continual protest against governmental invasions of private rights; and he reads history badly who regards it as a protest against merely royal power.

Definitions of the utmost boundaries of right and of authority, are not so common in England as here; because with them the system is in continual progress: and because general principles are not so much the means of a nation's growth, as inductions from its experience and history. In the revolution of 1789, France endeavored to invert this order and to set out by a course founded on philosophy and general principles. But it was a failure, because the people were not ready for it. A nation is not born in a day. The principles on which it acts and by which it advances, are the spontaneous accretions of its natural growth, becoming evolved as

needed, and adapted as evolved. David's sling seemed an insignificant weapon, but it suited him better than a sword, helmet and coat of mail. But the statesmen of the French National Assembly, properly defined the English and American idea of liberty, and presented a just generalization of the facts of history, when in 1780 they declared that "it consists in the ability to do any thing not injurious to others, and the natural rights of every man are only thus limited."

They understood the right of property, when they declared that it was "inviolable and sacred, and no one could be deprived of it, except when the public necessity, legally established, clearly required it; and then only on condition of just and previous compensation." They understood the province of government, when they declared that "the end of all association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, security, property and resistance to oppression." All this is involved in the personal liberty, personal security and private property guarantied as the natural and inherent rights of every Englishman, and especially of every Pennsylvanian, all being necessary as motives, encouragements, instruments and rewards of that personal virtue and energy, that are necessary to individual, and, therefore, to national development. It is all involved in the very religion which they profess, and which teaches that every man has his own conscience, his own duties, his own will, his own intelligence, his own future.

I say the general mind of France had not yet been trained to these high ideas of liberty, and they did not constitute part of the nations consciousness. Hence the days of Robespierre, when it was fancied that the laws of the fabulous or mythical Lycurgus were the true cure of all political ills. This was the very reverse of the enlightened political principles of National Assembly; for under those laws, individual liberty had no existence, Government directed all things.

Americans could commit no such error. They had been trained in the principles of English liberty, and had regularly and spontaneously outgrown them, their principles and institutions being de-

veloped together. Our whole provincial life was a struggle against governmental encroachments upon individual rights, and was the means of training us for a government of our own, by developing in us the principles embodied in our State Constitution, as "the general, great, and essential principles of liberty and free government."

Our whole declaration of rights stands as a monument of the regard which the people of the state have for the independence and protection of individual rights, and every line is marked with this principle. All our American Constitutions show that it is also an American principle, and it has been attempted to be introduced into the policy of most of the nations of Europe. The new clause, article 7, section 4, added in amending the Constitution, and providing that the Legislature shall not give any corporation or individual, the privilege of taking private property for public use, without compensation first paid or secured, is only a more adequate form of securing a well established principle, theretofore often invaded by the provision of a fruitless remedy. Under such a constitution, and within the prohibited limits, private rights are safe against the voice and act of even unanimous millions, unless they are willing to stand self branded as usurpers and tyrants: and I cannot doubt that the provisions of the bill of rights to which I have heretofore referred, do most expressly protect the citizen from the governmental invasion of his rights that is here intended.

Let us not be afraid of unduly reducing the province of government. The social principle is always strong enough to prevent this, and the tendency of events is always in the contrary direction. It is too common, the wish to cure all social ills, and advance all social projects, by the power of government. It is too common the wish to place the industry, enterprize and morality of the people, under the care of the state: though all history proves that they sicken and decay under the influence of large governmental powers, and that, in Christian lands, they revive and flourish under the spirit of individualism, which is natural to man, and which can be properly developed only where the pragmatism of the state is excluded. The state is no proper leader in any such matters. It

is delegated not to devise plans of acquiring wealth and securing happiness; but to protect individuals in the proper pursuit of their own lawful plans—not to guide enterprize into new channels and new undertakings; but to protect those already entered upon, and to keep open and improve their avenues. Man advances only by pursuing his own ideal of morality and enterprize; and this he pursues with an energy proportioned to the brightness of the rewards which his own eye discovers in it. When government interferes in such matters, it truly represents those only who suggest the plan; and they only will appreciate the ideal that it is intended to embody or realize; and they only, and not the people generally, can be relied on to give it effect. And so here, a small band of individual stockholders are likely to have the control of the millions of municipal subscriptions now proposed to be made in this and other cases, and the very proposition to make them, has prevented an incalculable amount of individual subscription, and set aside that much of the individual energy, forecast and watchfulness so necessary to the success of such enterprises. The laborer will not tax his own energies when Hercules undertakes his works, and he will be equally backward if Hercules attempt to control him. The vast majority of the people desire to be allowed to mind their own business in their own way, and it is this majority that ought to be regarded. And when the government undertakes to meddle with them, at the call of noisy speculators seeking public favors, no amount of official majorities can purge the deed of its tyrannical character.

Besides this, all history proves that the corruption of government increases with its powers, and that its purity, and therefore its performance, depend much upon the limitation of its jurisdiction. When its power is large, there are strong, and even ferocious, contests to get the use of its power. Even the power of passing private laws, authorizing private corporations, directing public improvements, and appropriating public money, has subjected government to the worst temptations, and given rise to intrigue, fawning and favoritism, and has annually attracted to our capitols swarms of voracious and unprincipled speculators, disgracing the public char-

acter, and causing more than one government to be publicly suspected and charged with corruption, and honest visitors there to be suspected of selfish and dishonest purposes. Every exertion of power that increases its patronage by enlarging its functions, should be watched with suspicion, for it increases the temptations to corruption, endangers the purity of those in power, casts a shade upon the character, and lowers the standard of public morality.

Our governmental stability depends much upon the absence of temptations to corruptions, and upon our reverence for the principle that the natural rights of the individual are sacred against the touch of government. Society was made for man, not man for society. Born to live in society, his virtue, intelligence and energy, are developed by it; and by the intercourse and competitions and efforts to which it naturally gives rise; and repressed and discouraged when attempted to be governed and forced by it. The natural disposition to appropriate is part of man's individualism. Upon it depends the very right of property, and without it, the positive gift of dominion over the earth would have been ineffectual. If it is unduly restrained or interfered with, the emulations which are at the bottom of all the energetic competitions upon which the progress of a people depends, will be most seriously affected. Men's energies are never so well expended and so fully exercised, as when left to the guidance of their own motives, tastes and intelligence. People will not and cannot work under the direction and compulsion of the state, with anything like the same effect as when their occupation and pursuits are chosen by themselves, and urged on by their own hopes and their own will.

It was, I believe, this experience and these reasons that called for our bill of rights, and they illustrate the propriety of the application which I desire to make of its principles. With most profound respect for those who differ from me, I must be allowed to say, that it is a long stride towards the very worst form of government, as applied to a nation—socialism. I think the injunction ought to be granted, for the reasons given above, and for the reasons given by my brother Lewis.